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Appl. No.: 09/913,378; Group Art Unit: 1791  
Response dated August 15, 2008  
Office Action dated May 15, 2008

Remarks

Claim Status

Claims 10, 11, 13, and 16-35 are pending in the application and remain rejected.

Rejections under 35 U.S.C. Section 112, 1<sup>st</sup> and 2<sup>nd</sup> Paragraphs

The rejections under Section 112 have been withdrawn.

The sole remaining issue is the rejection of record under 35 U.S.C. Section 103.

Rejection under 35 U.S.C. § 103(a)

Claims 10, 11, 13, and 16-35 remain rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,207,014 (de Haut).

The issue with respect to this rejection discussed during the Interview of February 19, 2008 was whether the use of saturated fatty alcohols disclosed in de Haut would materially change the characteristics of Applicants' claimed invention.

During the Interview, the Undersigned and the Examiner agreed that the addition of a component of the prior art that **remains at the surface of the substrate**, rather than penetrates quickly into the substrate would clearly be a **material change** to the emulsions of the invention, **which emulsions penetrate very quickly into the substrates and become uniformly dispersed therein**.

The following, as discussed during the Interview and in the Response dated February 21, 2008 based on the Interview, clearly demonstrates this distinction between the prior art and the claimed invention.

At column 6, lines 62-67, de Haut describes that:

"The length of the carbon chain of the fatty alcohol is essential with respect to applying the lotion to the surface of the fibrous structures. A sufficiently long chain **allows this kind of molecule to remain at the surface of the fibrous structure**, such as a sheet of paper, **rather than penetrating the surface and migrate into the structure.**"  
(Emphasis added.)

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Thus, de Haut explicitly and clearly describes that the saturated fatty alcohol remains at the surface of the fibrous structure, rather than penetrating the surface and migrating into the structure, as compared with the composition of the invention.

The properties of the saturated fatty alcohol impart the desired properties of de Haut's lotions of providing an "especially soft and slippery feel to the fibers..." See Column 4, lines 47-60 of de Haut.

By way of comparison, the specification at page 3, lines 10-15 describes that: "The emulsions **penetrate very quickly into the tissues and are uniformly dispersed therein.**" (Emphasis added.)

As is clear from the teachings of de Haut above, the saturated fatty alcohols of de Haut and their chain lengths are particularly selected so as to remain at the surface of the substrate, rather than penetrate and migrate into the substrate.

Applicants' emulsions, by way of comparison, desirably penetrate into the substrates very quickly and become uniformly dispersed therein.

In the present Office Action, the Examiner does not find these explicitly clear factual distinctions between a lotion that remains at the surface versus a lotion that penetrates the surface and uniformly disperses therein "**persuasive.**"

It is respectfully submitted that the Examiner's remarks concerning the particle size changing or not being changed are immaterial and irrelevant to the basic issue at hand here. Furthermore, the factual basis of the Examiner's remarks is not provided.

Clearly and without question, the long-chained saturated fatty alcohol of de Haut is excluded from Applicants' composition by the transitional phrase "consisting essentially of" for the reasons described above.

Based on the clear and explicit teachings of de Haut, as described above, the

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person of skill in the art who desired to produce a lotion that penetrated and uniformly dispersed within the substrate would have the common sense to avoid adding the long-chained saturated fatty alcohol of de Haut to Applicants' claimed composition.

One of skill in the art would certainly appreciate, based on de Haut, that to add the saturated fatty alcohol would clearly constitute a material change to Applicants' composition of the invention because it is essential, as taught by de Haut, that the saturated fatty alcohol remain at the surface of the substrate.

Thus, it is respectfully submitted that Applicants have demonstrated that the addition of de Haut's saturated fatty alcohols, which remain at the surface, would clearly materially change the emulsions of the claimed invention.

It is respectfully submitted that Applicants have met the legal burden of demonstrating the material change of excluding the saturated fatty alcohol of de Haut from Applicants' emulsions, pursuant to *In re De Lajarte* and *Ex parte Hoffman* (cited by the Examiner in the Office Action dated August 29, 2006).

#### Summary

For the reasons above, as discussed during the Interview, it is respectfully submitted that Claims 10, 11, 13, and 16-35 are patentable over the prior art. Reconsideration and withdrawal of the rejections are respectfully requested.

#### Fees

No additional fees are believed due, but the Commissioner is authorized to charge (or credit any balance) any fees deemed due (or owing) to Deposit Account No. 50-1177.

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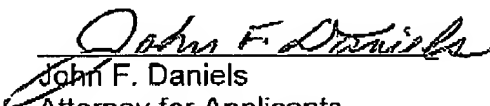
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**Conclusion**

It is respectfully submitted that the application is in condition for allowance.  
Accordingly, a Notice of Allowance is respectfully requested.

Respectfully submitted,

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